

# CHAPTER 16 – Cooperative Agreements

## Table of Contents

CHAPTER 16 – Cooperative Agreements.....	16-3
ARTICLE 1 – Formal Agreements .....	16-3
Cooperative Agreements.....	16-3
Other Formal Agreements.....	16-3
ARTICLE 2 – Informal Agreements .....	16-4
Memorandum of Understanding .....	16-4
Project Charters.....	16-4
ARTICLE 3 – Policy and Authority.....	16-4
Negotiation of Terms .....	16-4
Authorizing Documents .....	16-5
Do Not Incur Costs Prior to Execution of the Agreement .....	16-6
Development of Agreements.....	16-6
Conflict Resolution .....	16-6
Execution of Agreements.....	16-7
"For Further Reference" .....	16-7



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# CHAPTER 16 – Cooperative Agreements

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## ARTICLE 1 – Formal Agreements

### Cooperative Agreements

Projects on the State Highway System often involve a partnership of funding and responsibilities for doing the work. Whenever there is an exchange of effort, funding, or materials between the State and another local entity, for work on the State Highway System, a cooperative agreement is necessary. The agreement is permitted under Streets and Highway Code, Section 114 and 138, which allow Caltrans have others fulfill Caltrans' responsibilities to the State Highway System.

The cooperative agreement is a legally binding contract between the appropriate parties involved in the project. It documents the roles and responsibilities for each party and defines what work will be performed, by whom, how it will be paid for, on what schedule it will be completed, and any other roles and responsibilities. Because a cooperative agreement involves another party in the project, it also addresses liability and indemnification issues. The commitments made in the cooperative agreement become a significant part of the management responsibilities of the project.

Cooperative agreements can be written at any point in the project development process. Once the opportunity for a cooperative agreement is identified it is important to develop the agreement as soon as possible. The scope of an agreement should be consistent with the ability to make commitments. For example, the agreement may only involve the efforts in the PA&ED phase, not the entire project. The best time to prepare a cooperative agreement is during the development of an engineering document such as a PID or PR.

### Other Formal Agreements

- **Interagency Agreements** - A formal agreement between Caltrans and another State agency, State universities, or a University of California. Contact the Office of Procurement and Contracts in the Division of Administration for additional information.
- **Highway Improvement Agreements** – These agreements allow private parties to design and construct projects on the State Highway System that exceed \$1,000,000 in capital construction costs. These agreements follow the same format as a cooperative agreement but require the private party to pay for any work performed by Caltrans in advance of the performance of the work. Reference the *Cooperative Agreement Manual* and the *Encroachment Permits Manual* for additional information.
- **Maintenance Agreements** – These agreements define a relationship between Caltrans and local agencies regarding the maintenance or operation of portions of the

State Highway System. Agreements often involve signals and lighting systems. Contact the Division of Maintenance for additional information.

- **Encroachment Permits** – These agreements are for projects on the State Highway System with capital construction costs under \$1,000,000. On occasion projects that exceed \$1,000,000 but with a simple scope may be considered for encroachment permits. Likewise, projects that are under \$1,000,000 but have a complex scope may be considered for full oversight by Capital functional units. Reference the *Encroachment Permits Manual* for additional information.

## ARTICLE 2 – Informal Agreements

### Memorandum of Understanding

Caltrans will occasionally sign a Memorandum of Understanding (MOU) with an entity to outline each entity's intentions or manner in which business will be conducted for the various phases of project development and construction. MOUs are often used for broader scope to address items on a Program or corridor level. MOUs are not legally binding and cannot be used to commit resources. Cooperative Agreements should be executed as early as possible in the process to allow the formal commitment of funding and support resources that are intended by MOUs.

### Project Charters

The Project Charter is an informal document that clarifies and records the agreement between the Sponsor of the project, the project stakeholders, Project Development Team and the Project Manager, on the key elements of a project and project lifecycle. It helps the Project Manager guide the project team efficiently and effectively through the project development process. The Charter is the first project management document in the suite of project management plans used to identify and control a project's scope, schedule, and cost. It is also used to identify and meet customer satisfaction requirements. The Charter process helps to manage project scope and reduce rework by preventing unnecessary scope changes.

See Project Management Directive #7 for information on Project Charters.

## ARTICLE 3 – Policy and Authority

### Negotiation of Terms

Cooperative agreements are to be negotiated along with the development of a Project Initiation Document (PID), Project Report (PR), or other engineering document, which will serve as the authorizing document for the execution of the agreement. The scope of an agreement should be consistent with the scope of the authorizing document. For example, if the PID is only written to advance the project to Project Approval and

Environmental Document (PA&ED) then the cooperative agreement should also be limited in scope to that phase of work. If the scope and cost of the project are well defined and simple then the scope of the cooperative agreement may consider multiple phases of the project.

A cooperative agreement ready to sign, must be attached to the authorizing document. Getting the agreement ready to sign must involve the review and approval as to form by all applicable functional units and stakeholders. Since the authorizing document and the cooperative agreement are developed concurrently it is imperative that the appropriate stakeholders and functional units are consulted early and often. Involvement of appropriate parties early in the process will assure development of an accurate and acceptable agreement.

It is important to note that the cooperative agreement is not a commitment by any party until the agreement is executed.

## **Authorizing Documents**

All Cooperative Agreements require an authorizing document approved by the District Director. Authorizing document types include the following:

- Project Initiation Document (PID) (see Chapter 9)
- Combined Project Study Report / Project Report (PSR/PR) (see Chapter 9)
- Project Report (PR) or Draft Project Report (see Chapter 12)
- Supplemental document as appropriate when the project is between formal milestone documents (PID, PR, RTL) (see Chapter 12).
- Cooperative Agreement Report (CAR) when the cooperative work is not part of a project or phase covered by an engineering document described above (see Cooperative Agreement Manual)

Note: A CAR is not an authorizing document for a project; it only authorizes a cooperative agreement on an approved project.

An authorizing document authorizes the execution of the cooperative agreement and must therefore address:

- Why the agreement is in the best interest of the State.
- If the cooperative features are within Caltrans policy/procedure. If not, obtain and attach an exception to that policy from the appropriate policyholder.
- The work plan for the cooperative features
  - Hours, schedule, funding
  - Functional unit review and concurrence

Pay particular attention to CEQA lead agency role decisions, funding limitations if any, and full consideration of the risks.

## **Do Not Incur Costs Prior to Execution of the Agreement**

It is Caltrans' policy to have a formal Cooperative Agreement executed prior to incurring any costs or committing any support resources. The State has no legal authority or obligation to incur expenses in absence of a formal executed agreement.

If an agreement cannot be negotiated and executed then the work involved in the agreement must not begin.

## **Development of Agreements**

Pre-approved templates have been developed as a tool to facilitate the expeditious processing of an agreement for certain cooperative arrangements. They can be found on the Division of Design website. The articles used in the agreements, as well as the format, are pre-approved from a Legal and Accounting perspective. If the appropriate template is used and the language is not changed it will be approved automatically. These agreements must still come to HQ, Office of Cooperative Agreements for signatures by Legal as prescribed by statute.

If a pre-approved template is not appropriate or the project demands that special language be developed, the pre-approved templates are a good reference for usable articles or the manner in which articles should be written. Writing language unique to a project should come with the expectation that additional time will be necessary for development and review. Language that modifies policy should be accompanied by a policy exception from the policy owner. Non-standard language should involve the district cooperative agreement coordinator (CAC). The coordinator can assist in incorporating lessons learned from other agreements, current interpretations and contact with HQ, Office of Cooperative Agreements.

## **Conflict Resolution**

If all the stakeholders, internal and external to Caltrans, cannot agree to the cooperative arrangements in an agreement, the issue(s) should be raised to the next level of management within a reasonable timeframe. Efforts should be made to avoid the agreement becoming the critical path activity of the project.

The Deputy District Director, Program Project Management (Single Focal Point) (SFP) is responsible for the timely resolution of any conflict resolution necessary. The SFP should raise any issues to the Chief, Office of Cooperative Agreements, HQ. The SFP will coordinate the local entity's involvement. The Chief, OCA, will coordinate HQ Legal and Accounting involvement, and other HQ functional units as necessary. If necessary, an opportunity for a meeting between all parties can be arranged in the interest of timely resolution. If resolution is not forthcoming from this level, the issue can be escalated to the District Director and the Division Chief, Design.

## **Execution of Agreements**

It is Caltrans policy that the District Director will be final signatory on Cooperative Agreements.

A cooperative agreement, ready to sign, must be attached to the authorizing document. Once the District Director signs the authorizing document, the authorizing document and the cooperative agreement are to be routed to HQ, Office of Cooperative Agreements to coordinate signature by Accounting and Legal. The agreement will then be returned to the District. The District coordinates with other parties to obtain signatures. The other parties return the agreement, along with a supporting resolution, to the District where the District Director will sign the agreement for final execution.

Cooperative agreements must be fully executed within 60 calendar days of an approval of the authorizing document. This period of time is the performance measure for cooperative agreements. It is reported regularly to management.

## **"For Further Reference"**

For more information on CARs and pre-approved templates, refer to the *Cooperative Agreement Manual*, or contact the Office of Cooperative Agreements, HQ.